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C O N F I D E N T I A L SECTION 01 OF 03 BANGKOK 002691

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SUBJECT: THAI UPDATE: AND THE VERDICT IS . . .GUILTY

REF: BANGKOK 2677 (THAI UPDATE: QUIET SEPTEMBER 8)

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Classified By: Ambassdor Eric G. John, REASON 1.4 (B, D)

Summary and comment:

11. (SBU) The Thai Constitutional Court decided late September 9 that Prime Minister Samak Sundaravej had violated the constitution's ban on ministerial involvement in outside business activities by hosting cooking programs on television. The decision against Samak will force him to step down as prime minister, though it does not ban him from engaging in political activities. First Deputy PM Somchai Wongsawat will be caretaker PM, with the rest of the Cabinet remaining in place in acting status until parliament selects a new PM. Samak may return as PM if the coalition renominates him. A pro-government rally in the northeastern province Udon Thani late September 8 attracted thousands of PPP supporters, and the mobile cabinet meeting held in the same province, under tight security, was uneventful early September 9, despite fears of potential street clashes.

12. (C) Comment: The governing coalition majority People's Power Party (PPP) has yet to decide on whether to renominate Samak as prime minister, though as of this writing, most indications point in this direction, with no clear palatable alternative. Coalition minority partners seem ready to endorse PPP's choice to lead a new government, notwithstanding opposition Democrat Party efforts to peel them off to form an alternative coalition. If Samak and the current Cabinet reemerge largely intact, it is possible the court's ruling will have little practical effect on the current political stand-off, other than to further entrench the positions of those on both sides of the protracted debate. The People's Alliance for Democracy (PAD) will continue its antigovernment rally; Samak will continue as an embattled prime minister; and ordinary Thai will grow increasingly disenchanted with politics and politicians.

13. (C) Comment, cont: As long as the military and monarchy continue to stay on the sidelines, it will remain up to the politicians to reach a political settlement. A coalition move to renominate Samak in the wake of the court ruling,

however, will only exacerbate the current divide, in which both the government and the PAD have already rejected tentative mediation feelers from Senate Chair Prasopsuk and RTA Commander Anupong. Ambassador will see PPP Secretary General and DPM Suraphong Suebwonglee September 10 to discuss how PPP and the now acting government view the way forward. End Summary and Comment.

A quiet morning...

14. (U) Despite earlier fears of potential conflict in Udon on the margins of a September 9 mobile cabinet meeting (reftel), the Thai scene remained quiet on September 9, awaiting the Constitutional Court verdict. PM Samak's morning mobile cabinet meeting in Udon Thani was largely a non-event, with some 2000 police officers deployed to the area to provide security, and PAD supporters canceling a promised counter rally, according to press sources. Samak returned to Bangkok in the early afternoon to hear whether he would be found guilty of violating the constitution for hosting two cooking programs on Thai television.

15. (U) The evening before, on September 8, PM Samak held a rally in Udon Thani and gave a speech to provincial supporters, accusing the core PAD leaders of being responsible for the political chaos prevailing in Bangkok. Press sources gave varying estimates of the size of the red-clad crowd attending the rally, which they estimate was in the tens of thousands.

...and an afternoon in court

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16. (SBU) The Constitutional Court ruled that PM Samak had violated the constitution's conflict of interest provisions in Article 265 barring the Prime Minister from having outside business interests. Six judges considered Samak to be the "employee" of his cooking show; three others considered Samak to be a business partner of the studio -- both are not allowed by the constitution. While there was no evidence that Samak benefited greatly in financial terms from the cooking show arrangement (Samak claimed he rejected payment for the shows once he became PM, and the producer only paid for Samak's driver and the food used in the show, reportedly between \$60-\$150 per show), the justices spoke forcefully on the constitutional principle of preventing conflicts of interest.

17. (SBU) The guilty verdict, however, does not mean Samak will be forced from the scene, since he retains all political rights, including the right to hold office. While he must step down in favor of First Deputy PM Somchai, who becomes acting PM, most coalition MPs we talked to in the run-up to the verdict thought Samak would likely return as PM, though no final decision by the PPP had been made. According to the Constitution, the Parliament has 30 days to nominate/approve a new PM and Cabinet.

Next Step - renominate Samak?

18. (SBU) Ekkaphap Polsue, a member of the Phua Phaen Din (Motherland) party, and Varawut Silpa-Archa, son of Chart Thai (CT) leader Banharn Silpa-Archa, both told us September 9 they presumed the PPP would renominate Samak to be prime minister. Ekkaphap opined that no one else was tough enough to hold the government together, and the other options were unpalatable. He dismissed Chart Thai leader Banharn Silpa-archa, who has been tabled in the media as a possible new PM, as being too weak and not politically trustworthy; the PPP would opt for house dissolution rather than allow Banharn to become PM. Ekkaphap also saw the other leading PPP candidates for the premiership, Deputy PMs Somchai Wongsawat

and Suraphong Suebwonglee, as being too "soft" to control the current political situation.

¶9. (C) Varawut said CT would wait to see what PPP proposed while downplaying his father's chances of returning for a second stint as PM (Banhan served from 1995-96); he noted that there had been only one previous occasion in which a minority party successfully formed a government - Kukrit Pramoj in 1975-76. (Comment: With his own well-established power base, Banhan owes no fealty to Thaksin, an important consideration in PPP.)

¶10. (SBU) PPP MP Torphong Chaiyasan, seen as close to Thaksin, declined to endorse an automatic Samak return prior to the court ruling. He said PPP had not yet reached a consensus on renominating Samak, and that Samak himself had yet to decide what he would do.

¶11. (SBU) Ong-Ard Klampaiboon, a Democratic party MP from Bangkok and former party spokesperson, claimed a renomination of Samak to be PM could be a political turning point, expressing hope that coalition partners and some members of the PPP might be reluctant to support Samak's renomination. He admitted that his party had already approached all five coalition parties in anticipation of a change in the political environment after the court verdict this afternoon, but all remained undecided about whether to join the Democratic party or to stick with the old coalition.

Another legal hurdle for Samak  
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¶12. (U) In another looming legal challenge for the beleaguered Prime Minister, the Court of Appeals rejected Samak's September 8 request to postpone the reading of the verdict of his appeal on a defamation case so he could attend the UN General Assembly on September 25; the court ruled Samak had to appear in court on the 25th to hear whether his appeal request would be granted. If Samak failed to appear

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in court, the reading of the verdict would automatically be postponed for 30 days, and a warrant could be issued for his arrest - to force him to appear in court to hear the verdict.

It is unclear what this will do to Samak's travel plans. (Note: Defamation in Thailand is a serious offense. Samak was accused of defaming former Bangkok governor Samart Ratchapolsitte in early January by implying Samart had received kick-backs from a construction firm. The court initially sentenced Samak to a 24 month jail term.)

Negotiate? Not with them!  
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¶13. (SBU) The path forward in the ongoing Thai political drama remains unclear. According to press sources, Senate Speaker Prasopsuk Boondej reported to House Speaker Chai Chidchop and opposition leader Abhisit Vejjajiva that his attempt to end the conflict between the government and the PAD had been unsuccessful because the two parties had turned down his proposal to engage in mediated discussions. In his report, Prasopsuk said he had made three recommendations to the parties in the conflict. The first one was that Samak should either resign or dissolve the house; the second was that the PAD should end its rally and the core leaders should comply with the arrest warrants and turn themselves in to police, and the third was that the government should cancel its plans to hold a national referendum.

JOHN